

FEDERAL TRANSIT ADMINISTRATION PRIVATE ENTERPRISE PARTICIPATION IN TRANSPORTATION PLANNING AND SERVICE DELIVERY

Introduction

The Federal Transit Administration (FTA) recognizes the indispensable role of private enterprise in meeting the transportation needs of the public. Private sector operators are important for the delivery of transportation services in every community, in their role as either direct providers of services they choose to offer the public, or as contractors who deliver public transportation or specialized transportation services. Along with experience and knowledge, the private sector brings additional resources, flexibility, and competition to the transit community. The interconnected nature of America's transportation network demands that public transportation providers work with the private transportation industry to maintain the vitality and effectiveness of every component.

To achieve the community benefits that private sector transportation providers offer, they must participate fully in Federally-funded public transportation programs, from the early planning stages through the implementation of service. The following information is intended to assist both public sector and private sector parties in learning more about opportunities for private enterprise participation in the delivery of public transportation services.

What should private sector providers do if they want to be more involved in transportation planning or service delivery?

To get more involved in the transportation decisions made in their areas and to take advantage of opportunities for providing services, private sector operators should become familiar and involved with the procedures, products, and players in transportation planning. In urbanized areas, transportation funding decisions are made by a metropolitan planning organization (MPO). MPO's are comprised of state and local officials, including representatives of public transit operators, and are responsible for working with providers of transportation services to prepare long and short-range plans for delivering those services. These plans form the basis for decisions on improving transportation systems and services. In rural, non-urbanized areas, transportation planning is managed at the statewide level by State Departments of Transportation (State DOTs).

Joint regulations issued by FTA and Federal Highway Administration (FHWA) require the public to be involved in the transportation planning process and specifically require that private providers be consulted in developing transportation plans and programs in both urban and rural areas. Public involvement processes must be proactive and provide complete information, timely public notice, full public access to key decisions, and opportunities for early and continuing involvement throughout the transportation planning and programming process.

What you, the private provider can do.

1. Attend MPO meetings.

The proceedings of MPOs are open to the public, including private sector operators. Private providers can attend meetings of the MPO Board of Directors, as well as the many committees that advise the Board, to offer insight and ideas on how to serve new customer markets or better serve existing riders. By participating in these meetings, private sector providers may learn the status of transportation plans and funding programs, as well as procedures for voicing their service suggestions and proposals. In addition, they can use these occasions to make valuable contacts with state and local officials, including public transit providers, for service and contracting opportunities.

2. Review and comment on the TIP.

One of the critical documents prepared by the MPO is the Transportation Improvement Program (TIP), which should encourage to the maximum extent feasible the participation of private enterprise. The TIP lists transportation improvement projects and services proposed over the coming three years – in effect, a menu of potential contract opportunities. By participating in the planning process or by simply reviewing the TIP, private operators can gain advance notice of possible future contracting opportunities. Contact your local Metropolitan Planning Organization or local planning agency to learn more about the planning processes, the availability of the TIP, and how you can become more informed.

3. Participate in the STIP process.

As with MPOs, the work of State DOTs in managing statewide planning is equally open to the public, including private sector providers. The Statewide Transportation Improvement Program (STIP) serves the same function as the TIP in metropolitan areas, listing projects and services proposed over the coming three years. Contact the State DOT or local planning agency to learn more about the statewide planning process, the availability of the STIP, and how you can become more involved.

Why should State DOTs, MPOs and transit agencies work with private sector providers to plan and deliver transportation services?

State DOTs, MPOs, and transit providers can gain valuable insight on customers' needs and opportunities for service improvements from locally based private sector providers who may be aware of mobility needs and strategic opportunities to serve those needs, have the equipment and staffing capabilities to serve selected customer markets at lower costs than public providers, and be able to assemble resources and deliver services more quickly than public providers.

Federal laws and regulations require FTA grantees to involve the private sector in the planning process and encourage private sector participation in delivering transportation service. Federal statutes and FTA regulations mandate that in the annual development of the proposed program of projects, private transportation providers must be consulted; they must be allowed to examine and comment on each project; and those comments must be considered especially when a public provider prepares a final program of projects.

What opportunities are there for private sector providers to deliver public transportation services?

Opportunities for private sector providers generally fall into two categories: (1) introducing private transportation service to new or expanded customer markets, and (2) contracting with public providers to provide service on particular routes or to particular customer markets.

Direct Service to New or Expanding Markets. Important new opportunities for service development often exist in the areas of job access and human service transportation. Private providers may be uniquely qualified to serve these potential customers by providing access and circulator services connecting activity centers such as major employers, health care facilities, shopping centers, and government offices to the larger regional transit authorities.

Private operators can work with government officials and the general public to identify markets for offering new or improved transit service; they may also decide to offer services directly to those customer markets. State and local governments in the course of preparing plans and budgets for future services, should seek involvement and advice from private sector providers. The private sector may propose that their own directly operated transportation services be included in the Federally assisted program. To qualify, the private sector must be authorized by local authority to provide such service and the service must qualify under one of FTA's programs (described below) as an eligible public transportation service.

Contracting with Public Providers. Private sector providers may also provide service under contract to public transit agencies in corridors and communities within the service areas of those public operators. Suburban employment and activity centers and other community-based markets are among the many "niche" customer bases that private sector providers may be uniquely qualified to serve.

The Americans with Disabilities Act of 1990 (ADA) requires public transit systems that provide fixed route service also provide ADA Complementary Paratransit Service. Many systems contract for this service. [An FTA grantUnder this program, a grant](#) recipient in compliance with the ADA can treat as a capital expenditure up to ten percent of its annual formula apportionment under the urbanized and rural area formula grant programs to provide this service. This means that contracting opportunities may exist wherever this service is provided.

Express commuter service in selected corridors and implementation of vanpool programs are two additional types of service that transit providers may find can be provided more efficiently by the private sector. Public transit operators can use Federal funds to contract for these services.

Transit providers in both urbanized and rural areas are permitted to contract with private companies to provide service. Transit providers in all areas, regardless of size, may use FTA funds to pay for the capital costs of contracted service. Cities with a population under two hundred thousand can also use operating assistance funds to contract for service. Transit providers must follow third-party procurement rules when contracting to ensure competition.

What Federally-funded transportation programs provide special opportunities for private sector participation?

Important opportunities to provide service exist particularly in the areas of job access and human service transportation. Human service transportation generally refers to programs designed for individuals with lower incomes, persons with disabilities, elderly persons, and sometimes children and youth. Private providers may be uniquely qualified to serve these specialized travel markets.

On behalf of the Federal Interagency Coordinating Council on Access and Mobility, FTA is leading an interdepartmental effort known as United We Ride to promote coordinated human service transportation delivery systems and improve access to transportation-disadvantaged populations. This initiative emphasizes the need to develop coordinated transportation plans at the State and local level. Private operators have the opportunity to be active participants in the development of these plans. The United We Ride initiative encourages communities to develop a family of services that range from fixed route bus, to shared ride, to demand response, to volunteer systems that offer a wide range of mobility options for consumers.

Specific FTA-administered programs that present opportunities for participation by private providers include the Urbanized and Non-urbanized Area formula programs. As noted above, public entities and private non-profit agencies that receive funds under these programs may contract with the private sector for service. In addition, private for-profit companies may qualify for Federal funds under the following programs and services:

Elderly Individuals and Individuals with Disabilities Program. This program is designed to provide mass transportation service to meet the special transportation needs of elderly persons and persons with disabilities. While private operators cannot be direct recipients under this program, purchase of service by a recipient of Federal funds under this program is an eligible capital expense and therefore provides opportunities to contract for services with the private sector.

Intercity Bus Transportation Program. A state must use 15% of its annual apportionment under the rural formula program to support intercity bus service unless the Governor certifies that the rural intercity bus needs are adequately met. If the Governor has not made such a certification, funds may be available for contracting out intercity bus service. Private intercity bus companies can be either subrecipients of the state or contractors. This is one of the few exceptions that permit contractors to receive funds as a subrecipient of a direct recipient, in this case, a state. Information regarding the status of the intercity bus program in a particular state is available through the state department of transportation or the FTA Regional Office.

Over-the-Road Bus Program. FTA provides direct assistance to private providers of over-the-road buses for the incremental cost of equipment and training required by the ADA. By law, all the recipients under this program are private providers. FTA annually solicits applications and competitively selects recipients under this program through a notice placed in the Federal Register and posted on the FTA web site. Additionally, there are contracting opportunities in private providers' costs for lift and/or training services.

Job Access and Reverse Commute Program. This program funds local specialized services and may provide contracting opportunities for smaller private providers. Projects must be included in a local plan that is developed through a collaborative planning process involving transit and human service providers and other interested parties such as private transportation companies. Congress designates the local eligible projects each year as part of the Appropriations Act. The projects are listed each year in the annual Federal Register Notice of Apportionments that is available on the FTA web site (www.fta.dot.gov).

How does FTA monitor opportunities for private enterprise participation?

Planning Program Oversight. On an ongoing basis, FTA Regional Offices and FHWA Division Offices jointly oversee local planning efforts. At least every two years, FTA and FHWA jointly review planning processes in each State to ensure that they are being carried out in compliance with Federal requirements. At least once every three years, FTA and FHWA jointly review planning processes in each of the largest metropolitan areas (over two hundred thousand in population) and certify that they are meeting all statutory and regulatory requirements. Private enterprise participation in these planning processes is one of the planning elements monitored.

FTA's Oversight Reviews. FTA conducts about 180 Triennial Reviews each year, completing a review of all grant recipients of Urbanized Area formula funds every three years. The Triennial Review includes a review of the grantee's oversight of private provider performance and compliance with FTA regulations, including the statutory protections for the private sector. Similarly, FTA conducts periodic State Management

Reviews of the States' administration of the Non-urbanized and Elderly and Persons with Disabilities programs.

Compliance. If FTA finds, when conducting oversights or reviews, that a grantee has not met these requirements, FTA will seek appropriate action by the grantee to come into compliance.

What should a private sector operator do if it is not being given the opportunity to participate in community transportation planning?

If a private sector transportation provider feels that it is not being afforded the opportunity to participate in transportation planning, it should first contact the responsible planning organization for the local area -- the MPO in urbanized areas and State DOT in rural areas. It should convey its interest in becoming involved in planning processes and attempt to work through any problems. Federal requirements for private sector participation in the transportation planning work in metropolitan rural areas are clear and specific, and an expression of interest or discussion of the issues may serve to address the problems. Please refer to Appendices A-C of this document for legal references to the public provider's obligations.

If the private provider is not satisfied with the results, the next step is to contact the responsible FTA Regional Office regarding its concerns, including as many specifics as possible about the complaint. While FTA does not mandate specific procedures to foster private sector participation in the operation of transit services, private participation in metropolitan planning has been a requirement for more than a decade.

Statutory Protections for the Private Sector

49 U.S.C. 5307 (c)(2). Public Participation Requirements. Federal transit laws and regulations require recipients of Federal financial assistance to consult with private transportation providers in developing and finalizing a program of projects.

49 U.S.C. 5323 (a)(1). General Provisions on Assistance. FTA funded mass transportation equipment or facilities may operate in competition with transportation service provided by an existing mass transportation company only if the Secretary of Transportation determines that the program provides for the participation of private mass transportation companies to the maximum extent feasible.

49 U.S.C. 5323(d). Charter Bus Operations. Federal transit law prohibits recipients of Federal financial assistance from providing charter service, except under certain circumstances. Any charter service that is provided by FTA recipients must be "incidental." This means that the charter service may not interfere with or detract from regularly scheduled mass transportation service or shorten the life of the equipment or facilities. The charter rule is summarized in a separate brochure available from FTA. For further information, the complete text of FTA's Charter Service regulation can be accessed on line at <http://www.fta.dot.gov/library/legal/charterservice/index.html>

49 U.S.C. 5323(f). School Bus Operations. Federal transit laws and regulations limit the use of public transportation to transport students to and from school and school-sponsored activities or trips in competition with private transportation providers. In general, recipients of FTA grants cannot provide transportation for students and school personnel if that transportation excludes the general public or competes with private school bus operators. The school bus rule is summarized in a separate brochure available from FTA. The complete text of FTA's School Bus Operations regulations can be accessed online at <http://www.fta.dot.gov/library/legal/schoolbus/>

For more information, contact your FTA Regional Office:

Region 1 (CT, MA, ME, NH, RI, VT)
55 Broadway, Suite 920
Cambridge, MA 02142-1093
Phone (617) 494-2055
Fax (617) 494-2865

Region 2 (NJ, NY, VI)
One Bowling Green, Room 429
New York, NY 10004-1415
Phone (212) 688-2170
Fax (212) 668-2136

Region 3 (DC, DE, MD, PA, VA, WV)
1760 Market Street, Suite 500
Philadelphia, PA 19103-4124
Phone (215) 656-7100
Fax (215) 656-7260

Region 4 (AL, FL, GA, KY, MS, NC, PR, SC, TN)
61 Forsyth Street, S. W., Suite 17T50
Atlanta, GA 30303
Phone (404) 562-3500
Fax (404) 562-3505

Region 5 (IL, IN, MI, MN, OH, WI)
200 West Adams Street, Suite 320
Chicago, IL 60606
Phone (312) 353-2789
Fax (312) 866-0351

Region 6 (AR, LA, NM, OK, TX)
819 Taylor Street, Room 8A36
Fort Worth, TX 76102
Phone (817) 978-0550

Fax (817) 978-0575

Region 7 (IA, KS, MO, NE)
901 Locust Street, Suite 404
Kansas City, MO 64106
Phone (816) 329-3920
Fax (816) 329-3921

Region 8 (CO, MT, ND, SD, UT, WY)
12300 West Dakota Avenue, Suite 310
Lakewood, CO 80228-2583
Phone (720)-963-3300
Fax (720) 963-3333

Region 9 (AS, AZ, CA, GU, HI, NV)
201 Mission Street, Suite 2210
San Francisco, CA 94105-1926
Phone (415) 744-3133
Fax (415) 744-2726

Region 10 (AK, ID, OR, WA)
915 Second Avenue, Suite 3142
Seattle, WA 98174-1002
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Appendix A: Statutes

49 U.S.C. §5303(f)(4) Before approving a long-range plan, each metropolitan planning organization shall provide . . . private providers of transportation . . . with a reasonable opportunity to comment on the plan in a way the Secretary of Transportation considers appropriate.

49 U.S.C. §5304(a) Transportation improvement plan. Development and update. – In cooperation with the state and affected mass transportation operators, a metropolitan planning organization designated for a metropolitan area shall develop a transportation improvement plan for its area. In developing the program, the organization shall provide . . . private providers of transportation . . . with a reasonable opportunity to comment on the proposed program. The program shall be updated at least once every two years and shall be approved by the organization and the chief executive officer of the State.

49 U.S.C. §5304(d) Notice and comment. —Before approving a transportation improvement program, a metropolitan planning organization shall provide . . . private providers of transportation . . . with reasonable notice and an opportunity to comment on the proposed program.

49 U.S.C. §5305(e)(1) Transportation management areas, Certification. At least once every 3 years, the Secretary shall ensure and certify that each metropolitan planning organization in each transportation management area is carrying out its responsibilities under applicable laws of the United States. The Secretary may make the certification only if the organization is complying with section 134 of title 23 and other applicable requirements of laws for the United States and the organization and chief executive officer have approved a transportation improvement program for the area.

49 U.S.C. §5306 Private enterprise participation in metropolitan planning and transportation improvement programs and relationship to other limitations.

- (a) Private enterprise participation. A plan or program required by sections 5303, 5304, or 5305 of this title shall encourage to the maximum extent feasible the participation of private enterprise. If equipment or a facility already being used in an urban area is to be required under this chapter, the program shall provide that it be improved so that it will better serve the transportation needs of the area.
- (b) Relationship to other limitation. —Sections 5303-5305 of this title do not authorize—
 - (1) a metropolitan planning organization to impose a legal requirement on a transportation facility, provider, or project not eligible under this chapter of title 23; and
 - (2) intervention in the management of a transportation authority.

49 U.S.C. §5307(c) Public Participation Requirements. Each recipient of a grant shall--

- (1) make available to the public information on amounts available to the recipient under this section and the program of projects the recipient proposes to undertake;
- (2) develop, in consultation with interested parties, including private transportation providers, a proposed program of projects for activities to be financed;
- (3) publish a proposed program of projects in a way that affected citizens, private transportation providers, and local elected officials have the opportunity to examine the proposed program and submit comments on the proposed program and the performance of the recipient;
- (4) provide an opportunity for a public hearing in which to obtain the views of citizens on the proposed program of projects;
- (5) ensure that the proposed program of projects provides for the coordination of mass transportation services assisted under section 5336 of this title with transportation services assisted from other United States Government sources;
- (6) consider comments and views received, especially those of private transportation providers, in preparing the final program of projects; and
- (7) make the final program of projects available to the public.

Appendix B
Joint FTA/FHWA Planning Regulation
Planning Assistance and Standards, 23 CFR Part 450

Section 450-212(a), Public Involvement. Public involvement processes shall be proactive and provide complete information, timely public notice, full public access to key decisions and opportunities for early and continuing involvement. The processes shall provide for . . . (2) Timely information about transportation issues and processes to . . . private providers of transportation . . . affected by transportation plans, programs, and projects.

Section 450-214, Statewide transportation plan. Section (c). In developing the plan, the State shall . . . (3) provide for public involvement as required under section 450.212.

Section 450-216, Statewide transportation improvement program (STIP).

Section (a). Each State shall develop a statewide transportation improvement program for all areas of the State The Governor shall provide for public involvement in development of the STIP as required by section 450.212.

Subpart C, Metropolitan Transportation Planning and Programming.

Section 450-316 Metropolitan transportation planning process: Elements.

Section (b)(1). In addition, the metropolitan transportation planning process shall
(ii) Provide timely information about transportation issues and processes to . . . private providers of transportation . . . affected by transportation plans, programs, and projects . .
. . .

Section (b)(4). Provide for the involvement of . . . appropriate private transportation providers

Section 450.322. Metropolitan transportation planning process: Transportation plan. Section (c). There must be adequate opportunity for public official (including elected officials) and citizen involvement in the development of the transportation plan before it is approved by the MPO, in accordance with the requirements of section 450.316(b)(1). Such procedures shall include opportunities for . . . private providers of transportation . . . to be involved in the early stages of the plan development/update process.

The complete text of the joint Federal Highway Administration and Federal Transit Administration “Planning Assistance and Standards” regulation, 23 CFR Part 450, can be accessed online at <http://www.fhwa.dot.gov/hep/23cfr450.htm>

Appendix C: Private Enterprise Provisions in FTA Circulars

The following Circulars provide statutory, regulatory and policy guidance to applicants and recipients concerning private enterprise provisions applicable to FTA recipients.

Circular 8100.1B, Program Guidance and Application Instructions for Metropolitan Planning Grants, October 25, 1996.

Chapter I, 1. j. “An opportunity must be made available for participation of private enterprise in developing and implementing transportation plans and programs.”

The complete text of the Federal Transit Administration “Program Guidance and Application Instructions for Metropolitan Planning Grants” can be accessed on line at http://www.fta.dot.gov/legal/guidance/circulars/8000/429_5943_ENG_HTML.htm

Circular 9030.1C, Urbanized Area Formula Program: Grant Application Instructions, October 1, 1998.

24. Private Enterprise Concerns

- a. Participation by Private Enterprise (Reference to §5306(a); 5323(a)(1)(B); 23 CFR Part 450.322(c); Federal Register Notice “Private Enterprise Participation,” of April 26, 1994 (59 Fed.Reg.21890 et seq. (1994); 49 USC §5303-5306)
- b. Acquisition of Private Mass Transportation Facilities (Reference to 49 USC §5306(a); 49 USC §5323(a)(1)(C))

The complete text of the Federal Transit Administration “Urbanized area formula Program: Grant Application Instructions” can be accessed on line at http://www.fta.dot.gov/legal/guidance/circulars/9000/433_1152_ENG_HTML.htm

Circular 9040.1E, Nonurbanized Area Formula Program Guidance and Grant Application Instructions, October 10, 1998.

X. Other Provisions

3. Private Enterprise Participation
4. Charter Service
5. School Transportation

The complete text of the Federal Transit Administration “Nonurbanized Area Formula Program: Grant Application Instructions,” can be accessed on line at http://www.fta.dot.gov/legal/guidance/circulars/9000/433_1182_ENG_HTML.htm

Circular 9070.1E, The Elderly and Persons with Disabilities Program Guidance and Application Instructions, October 1, 1998.

VI. Other Provisions

6. Private Sector Participation

The complete text of the Federal Transit Administration, “The Elderly and Persons with Disabilities Program Guidance and Application Instructions,” can be accessed on line at http://www.fta.dot.gov/legal/guidance/circulars/9000/433_1208_ENG_HTML.htm

Circular 9300.1A, Capital Program: Grant Application Instructions, October 1, 1998.

VI. 9. Private Enterprise Concerns.

- a. Participation by Private Enterprise (Reference to 23.) CFR Part 450, and 49 CFR Part 613 (Planning Assistance and Standards); 49 USC §5306(a); 49 USC §5323(a)(1)(B); 49 USC §5303(f)(4); 23 C.F.R. Part 450.322(c). 59 Fed.Reg. 21890 et seq. (1994); 49 USC §§5303-5306.)
- b. Acquisition of Private Mass Transportation Facilities (49 USC §5306(a); 49 USC §5323(a)(1)(c).
- c. Charter and School Bus Operations (5323(d); 5323(f)).

The complete text of the Federal Transit Administration “Capital Program: Grant Application Instructions,” can be accessed on line at http://www.fta.dot.gov/legal/guidance/circulars/9000/433_1223_ENG_HTML.htm